

REMARKS

The Examiner considers Applicants' Reply filed on October 23, 2006, to be not fully responsive with respect to the Examiner's objection to Claim 66.

Record of Telephone Interview

On January 29, 2007, the Applicants' representative, Thomas Kulaga, spoke with Examiner Michael Nghiem on the telephone. Mr. Kulaga pointed out to the Examiner that, according to MPEP 706.01, the objection to Claim 66 was improper. Section 706.01 of the MPEP contrasts claim rejections with objections and provides guidance to examiners in objecting to claims. The objection made to Claim 66 was not proper because the Examiner only asked a question and the objection was not directed to any improper form of the claim. Regardless of the propriety of the objection, Mr. Kulaga said that the Reply filed on October 23, 2006, addressed the objection and answered the Examiner's question regarding the structure corresponding to the means-plus-function limitations.

Additionally, Mr. Kulaga pointed out that MPEP 714.02 and 37 C.F.R. § 1.111(b) contain the rules regarding replying to an Office Action. In particular, the C.F.R. says that a proper reply to an objection must be in writing and address the objection. Unlike replies to claim rejections, there is no requirement for a reply to an objection to contain any substantive arguments. Accordingly, Applicants' Reply to the objection was responsive to the Examiner's question when the Applicants identified the appropriate portion of the Specification that provided the answer to the question asked by the Examiner.

The Examiner said that the Reply was not responsive because the Examiner did not consider the software routines identified by the Applicants as structures for a means-plus-function claim. The Examiner said only computer hardware could be corresponding structure. The Examiner said that the software routines could not be part of the function of a means-plus-function limitation because they were steps. Mr. Kulaga pointed out that a simple search shows many issued patents with means-plus-function claims where the functions are implemented by software routines.

Mr. Kulaga told the Examiner that the Examiner's stated disregard of software routines as structures, material, or acts corresponding to the means-plus-function claim elements was not apparent from the Office Action nor from the Office Communication. Also, Mr. Kulaga said that the Examiner's position went to the substance of the claim and not the form of the claim. Therefore, the Examiner's position should be addressed in a rejection to the claim and not as an objection. The Examiner said he was giving the Applicants a break by making an objection instead of a rejection. Mr. Kulaga pointed out that Applicants wished only for the Examiner to review the claims and if any are rejected, provide reasons for the rejection such that the Applicants can properly address the substantive issues.

Objection to Claim 66

The Examiner originally objected to Claim 66 by asking if the means of the claim were related to the processor **126**. Published Specification paragraphs 163 to 165 discuss the structures, materials, and acts that perform the functions in the means-plus-function limitations of Claim 66. In the Response filed on October 23, 2006, Applicants referred the Examiner to the Specification paragraphs that addressed the Examiner's question. Applicants respectfully submit that the Response filed on October 23, 2006, was fully responsive because the Response addressed the objection to Claim 66. See, 37 C.F.R. § 1.111(b), which requires only that replies to objections be in writing and address the objection.

Applicants wish to move the examination of the Application forward as expeditiously as possible and obtain a patent for their invention as soon as possible. Therefore, Applicants cancel Claim 66, without prejudice, which renders the Examiner's objection moot. Applicants reserve the right to present any or all cancelled claims in a later filed continuation application. The grounds of rejection for those cancelled claims will be addressed at that time.

Conclusion

In view of the cancellation of objected to Claim 66, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the Examiner is respectfully requested. If, however, the Examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the Examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 50-3827 (06024-UPA).

Respectfully submitted,



Thomas A. Kulaga
Registration No. 46,844

Knox Patents: Kulaga Law Office, PLLC
P.O. Box 30034
Knoxville, Tennessee 37930-0034
865-470-4212
tkulaga@knoxpatents.com